

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1113 be amended to read as follows:

1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:

3 "SECTION 1. IC 10-13-6-9.5 IS ADDED TO THE INDIANA
4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2005]: **Sec. 9.5. (a) The DNA sample**
6 **processing fund is established for the purpose of funding the**
7 **collection, shipment, analysis, and preservation of DNA samples**
8 **and the conduct of a DNA data base program under this chapter.**
9 **The fund shall be administered by the superintendent.**

10 **(b) The expenses of administering the fund shall be paid from**
11 **money in the fund.**

12 **(c) The treasurer of state shall invest the money in the fund not**
13 **currently needed to meet the obligations of the fund in the same**
14 **manner as other public money may be invested.**

15 **(d) Money in the fund at the end of a state fiscal year does not**
16 **revert to the state general fund."**

17 Page 3, between lines 31 and 32, begin a new line block indented
18 and insert:

19 **"(18) A DNA sample processing fee (IC 33-37-5-26.2)."**

20 Page 5, between lines 14 and 15, begin a new line block indented
21 and insert:

22 **"(14) A DNA sample processing fee (IC 33-37-5-26.2)."**

23 Page 6, between lines 33 and 34, begin a new line block indented
24 and insert:

25 **"(12) A DNA sample processing fee (IC 33-37-5-26.2)."**

26 Page 12, between lines 3 and 4, begin a new paragraph and insert:

27 "SECTION 14. IC 33-37-5-26.2 IS ADDED TO THE INDIANA
28 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2005]: **Sec. 26.2. In each action in which a**
30 **person is:**

31 **(1) convicted of an offense;**

1 **(2) required to pay a pretrial diversion fee;**
 2 **(3) found to have committed an infraction; or**
 3 **(4) found to have violated an ordinance;**
 4 **the clerk shall collect a DNA sample processing fee of one dollar**
 5 **(\$1).".**

6 Page 12, reset in roman line 17.

7 Page 14, line 15, delete "fees collected under the following:" and
 8 insert **"fees collected under IC 33-37-5-26.2 (DNA sample**
 9 **processing fees).".**

10 Page 14, delete lines 16 through 18.

11 Page 14, reset in roman line 30.

12 Page 14, reset in roman line 38.

13 Page 15, reset in roman line 4.

14 Page 16, line 13, after "under" delete "the" and insert **"IC**
 15 **33-37-5-26.2 (DNA sample processing fees).".**

16 Page 16, delete lines 14 through 16, begin a new paragraph and
 17 insert:

18 "SECTION 17. IC 33-37-7-9 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) On June 30 and
 20 on December 31 of each year, the auditor of state shall transfer to the
 21 treasurer of state ~~six seven~~ million ~~seven hundred four~~ **thirty-nine**
 22 thousand two hundred fifty-seven dollars (~~\$6,704,257~~) (**\$7,039,257**) for
 23 distribution under subsection (b).

24 (b) On June 30 and on December 31 of each year the treasurer of
 25 state shall deposit into:

26 (1) the family violence and victim assistance fund established by
 27 IC 12-18-5-2 an amount equal to ~~eleven ten and eight-hundredths~~
 28 **fifty-six hundredths** percent (~~11.08%~~) (**10.56%**);

29 (2) the Indiana judges' retirement fund established by
 30 IC 33-38-6-12 an amount equal to ~~twenty-five~~ **twenty-four** and
 31 ~~twenty-one~~ **two** hundredths percent (~~25.21%~~) (**24.02%**);

32 (3) the law enforcement academy building fund established by
 33 IC 5-2-1-13 an amount equal to three and ~~fifty-two~~ **thirty-six**
 34 hundredths percent (~~3.52%~~) (**3.36%**);

35 (4) the law enforcement training fund established by IC 5-2-1-13
 36 an amount equal to ~~fourteen~~ **thirteen** and ~~nineteen-hundredths~~
 37 **fifty-two hundredths** percent (~~14.19%~~) (**13.52%**);

38 (5) the violent crime victims compensation fund established by
 39 IC 5-2-6.1-40 an amount equal to ~~sixteen~~ **fifteen** and
 40 ~~fifty-hundredths~~ **seventy-two hundredths** percent (~~16.50%~~)
 41 (**15.72%**);

42 (6) the motor vehicle highway account an amount equal to
 43 ~~twenty-six~~ **twenty-five** and ~~ninety-five~~ **sixty-seven** hundredths
 44 percent (~~26.95%~~) (**25.67%**);

45 (7) the fish and wildlife fund established by IC 14-22-3-2 an
 46 amount equal to ~~thirty-two hundredths~~ **thirty-one hundredths** of
 47 one percent (~~0.32%~~) (**0.31%**); and

(8) the Indiana judicial center drug and alcohol programs fund established by IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and ~~twenty-three~~ **thirteen** hundredths percent (~~2.23%~~); **(2.13%); and**

(9) the DNA sample processing fund established under IC 10-13-6-9.5 for the funding of the collection, shipment, analysis, and preservation of DNA samples and the conduct of a DNA data base program under IC 10-13-6 an amount equal to four and seventy-one hundredths percent (4.71%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state for deposit into the public defense fund established under IC 33-40-6-1:

(1) after June 30, 2004, and before July 1, 2005, one million seven hundred thousand dollars (\$1,700,000); and

(2) after June 30, 2005, two million two hundred thousand dollars (\$2,200,000).

SECTION 18. IC 33-37-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a)** Upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section 3(b) of this chapter, the fiscal body of the city or town shall appropriate from the city or town fund to the program the amount collected for the program fee under IC 33-37-5.

(b) Funds derived from a deferral program or a pretrial diversion program may be used only for the following purposes:

(1) Personnel expenses related to the operation of the program.

(2) Special training for:

(A) a prosecuting attorney;

(B) a deputy prosecuting attorney;

(C) support staff for a prosecuting attorney or deputy prosecuting attorney; or

(D) a law enforcement officer.

(3) Employment of a deputy prosecutor or prosecutorial support staff.

(4) Victim assistance.

(5) Electronic legal research.

(6) Office equipment, including computers, computer software, communication devices, office machinery, furnishings, and office supplies.

(7) Expenses of a criminal investigation and prosecution.

(8) An activity or program operated by the prosecuting attorney that is intended to reduce or prevent criminal activity, including:

(A) substance abuse;

(B) child abuse;

- (C) domestic violence;
- (D) operating while intoxicated; and
- (E) juvenile delinquency.

(9) Any other purpose that benefits the office of the prosecuting attorney or law enforcement and that is agreed upon by the county fiscal body and the prosecuting attorney.

(c) Funds described in subsection (b) may be used only in accordance with guidelines adopted by the prosecuting attorneys council under IC 33-39-8-5.

SECTION 19. IC 33-37-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Upon receipt of monthly claims submitted on oath to the fiscal body by a program listed in section 5(b) of this chapter, the county fiscal body shall appropriate from the county fund to the program or fund the amount collected for the program under IC 33-37-5.

(b) Funds derived from a deferral program or a pretrial diversion program may be used only for the following purposes:

(1) Personnel expenses related to the operation of the program.

(2) Special training for:

- (A) a prosecuting attorney;
- (B) a deputy prosecuting attorney;
- (C) support staff for a prosecuting attorney or deputy prosecuting attorney; or
- (D) a law enforcement officer.

(3) Employment of a deputy prosecutor or prosecutorial support staff.

(4) Victim assistance.

(5) Electronic legal research.

(6) Office equipment, including computers, computer software, communication devices, office machinery, furnishings, and office supplies.

(7) Expenses of a criminal investigation and prosecution.

(8) An activity or program operated by the prosecuting attorney that is intended to reduce or prevent criminal activity, including:

- (A) substance abuse;
- (B) child abuse;
- (C) domestic violence;
- (D) operating while intoxicated; and
- (E) juvenile delinquency.

(9) Any other purpose that benefits the office of the prosecuting attorney or law enforcement and that is agreed upon by the county fiscal body and the prosecuting attorney.

(c) Funds described in subsection (b) may be used only in accordance with guidelines adopted by the prosecuting attorneys council under IC 33-39-8-5.

SECTION 20. IC 33-39-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) After June 30, 2005, this section does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) This section does not apply to a person arrested for or charged with:

- (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or**
- (2) if a person was arrested or charged with an offense under IC 9-30-5-1 through IC 9-30-5-5, an offense involving:**

(A) intoxication; or

(B) the operation of a motor vehicle;

if the offense involving intoxication or the operation of a motor vehicle was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

~~(b)~~ **(c)** A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; ~~and~~
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; ~~and~~
- (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.**

~~(c)~~ **(d)** An agreement under subsection ~~(b)~~ **(c)** may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1;
- (2) work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip the person for suitable employment;
- (3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;
- (4) support the person's dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;
- (6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;
- (7) report to the prosecuting attorney at reasonable times;
- (8) answer all reasonable inquiries by the prosecuting attorney and

promptly notify the prosecuting attorney of any change in address or employment; and

(9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

~~(d)~~ **(e)** An agreement under subsection ~~(b)(2)~~ **(c)(2)** may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

~~(e)~~ **(f)** The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

~~(f)~~ **(g)** All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-37-8.

~~(g)~~ **(h)** If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection ~~(c)(6)~~ **(d)(6)**:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 21. IC 33-39-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The council shall do the following:

(1) Assist in the coordination of the duties of the prosecuting attorneys of the state and their staffs.

(2) Prepare manuals of procedure.

(3) Give assistance in preparation of the trial briefs, forms, and instructions.

(4) Conduct research and studies that would be of interest and value to all prosecuting attorneys and their staffs.

(5) Maintain liaison contact with study commissions and agencies of all branches of local, state, and federal government that will be of benefit to law enforcement and the fair administration of justice in Indiana.

(6) Adopt guidelines for the expenditure of funds derived from a deferral program or a pretrial diversion program."

Page 17, line 11, after "(f)" insert **"This subsection does not apply to an offense or violation under IC 9-24-6 involving the operation of a commercial motor vehicle."**

Page 17, line 28, strike "and".

Page 17, line 30, delete "." and insert **"; and**

(6) if the deferral program is offered by the prosecuting attorney, the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council."

Page 17, after line 37, begin a new paragraph and insert:

"SECTION 24. [EFFECTIVE JULY 1, 2005] Notwithstanding

1 **IC 33-39-1-8 and IC 34-28-5-1, both as amended by this act, a**
2 **prosecuting attorney is not required to electronically transmit**
3 **information to the prosecuting attorneys council under**
4 **IC 33-39-1-8 when withholding prosecution or under IC 34-28-5-1**
5 **when deferring action until January 1, 2006."**

6 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1113 as printed April 1, 2005.)

Senator LONG